SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1931

No. 56

RAY LYMAN WILBUR, AS SECRETARY OF THE INTERIOR, PETITIONER

vs.

THE UNITED STATES OF AMERICA, EX REL. THE VINDICATOR CONSOLIDATED GOLD MINING COMPANY

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

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[Caption omitted.]

In Supreme Court of the District of Columbia as a District Court of the United States

At Law

No. 76382

THE UNITED STATES OF AMERICA EX REL. THE VINDICATOR CONSOLIDATED GOLD MINING COMPANY

vs.

ROY O. WEST, SECRETARY OF THE INTERIOR

Petition for review and for mandamus

Feb. 18, 1929

The petition of the United States in relation of The Vindicator Consolidated Gold Mining Company respectfully represents:

I. The relator, The Vindicator Consolidated Gold Mining Company, is a corporation duly and legally organized and existing under the laws of the State of Colorado, a citizen of the State of Colorado residing in the county of Denver in said State, and this petition is brought to review the final decision of the Secretary of the Interior upon a question of law which has heretofore arisen in the adjustment, liquidation, and payment of relator's claim under the act hereinafter named and against Roy O. West, a citizen of the State of Illinois, officially residing in the District of Columbia.

II. That the said Roy O. West, respondent, is Secretary of the Interior of the United States, and as such charged with the administration of the laws of the United States relative to the war minerals claims and especially section 5 of the act of March 2, 1919, and the amendments thereto, including the amendment entitled "A Bill to Amend Section 5 of an Act Approved March 2, 1919, known as the War Minerals Act", approved February 15th, 1929, and such respondent is sued in his official capacity as Secretary of the Interior as aforesaid.

III. The said respondent as Secretary of the Interior and his predecessors in office under said section 5 of the said act as amended was and is authorized to adjust, liquidate, and pay the losses suffered by any firm, person, or corporation by reason of producing or preparing to produce chrome in compliance with the request or demand of the Department of the Interior when such production was to supply the urgent needs of the Nation in the prosecution of the war.

IV. The Vindicator Consolidated Gold Mining Company, between the dates of the 6th of April, 1917, and the 11th day of November,

1918, in preparing to produce and in producing chrome in compliance with the request of the Department of the Interior to supply the urgent needs of the Nation expended and incurred obligations in good faith for and upon property containing chrome in sufficient quantities to be of commercial importance.

V. As authorized by said act of March 2, 1919, section 5, The Vindicator Consolidated Gold Mining Company, on May 31st, 1919, filed its claim with the Secretary of the Interior seeking and praying that an award be made to it under said act of its net losses for the expenditures made and obligations incurred by complainant in good faith upon property which contained chrome as described in section 5 of said act.

VI. In the said petition or claim filed as aforesaid this relator as part of said expenditures and obligations claimed $16,259.00, as an expenditure for the purchase of property.

VII. That hearings were held before the agencies established by the Department of the Interior for that purpose and an award was made and subsequent rehearing asked and obtained and to wit: On the 15th day of May, 1922, the Secretary of the Interior then in office definitely and specifically denied relator an award for said item of loss and said "that such item was properly rejected, that it clearly represented the payment for property, and was not reimbursable under the law."

VIII. That it is true as was demonstrated by undisputed evidence that relator expended monies for the purchase of property and such item constituted a net loss to relator and the same was denied for the sole reason that the Secretary of the Interior held as a matter of law that such loss was not included within the provisions of said act.

IX. Thereafter, the Congress of the United States by the act hereinbefore described, approved February 13th, 1925, gave jurisdiction to this court to review the final decision of the Secretary of the Interior upon any question of law which has arisen or which may arise in the adjustment, liquidation, and payment of claims under said section 5 of the act approved March 2, 1919, and amendments thereto.

X. In this case the present Secretary of the Interior, respondent herein, has refused to reopen the decisions of his predecessors in office and there has been a final decision of the Secretary of the Interior based upon the question of law for it is not disputed that relator paid and lost monies in the purchase of property and in that it is claimed by respondent as a matter of law such loss is not reimbursable under the law.

XI. That the respondent and his predecessors in office erred as a matter of law in not finding that said sum lost as aforesaid by relator is such a loss as was allowable under said act of March 2, 1919, as amended.

XII. Wherefore, petitioner, on behalf of the relator aforesaid, prays:

1. That this court review the final decision of the Secretary of the Interior and his predecessors in office upon the question of law involved and direct said Secretary, respondent herein, to make an award of such amount as the facts show is due for purchase of property.

2. That a writ of mandamus be issued directing the respondent, Roy O. West, Secretary of the Interior, to take jurisdiction of the claim of relator for expenditures made in the purchase of property as hereinbefore set forth and to allow such sum as may be just and equitable therefor, and to adjust and pay relator's net losses in the purchase of property.

3. That such other order or orders be entered as this court may deem necessary under the law.

4. That a rule may issue requiring respondent, Roy O. West, as Secretary of the Interior to show cause, if any he can, why this court should not review said final decision and why a writ of mandamus should not issue as herein prayed.

THE VINDICATOR CONSOLIDATED GOLD MINING COMPANY,
By NELSON FRANKLIN, *Vice President.*

[*Duly sworn to by Nelson Franklin; jurat omitted in printing.*]

In Supreme Court of the District of Columbia, as a District Court of the United States

[Title omitted.]

Motion for substitution.

Filed Mar. 15, 1929

In the above-styled cause relator respectfully shows to the court that the respondent, the honorable Roy O. West, has ceased to hold the office of Secretary of the Interior and that that office is now held by the honorable Ray Lyman Wilbur; that there is a substantial need for continuing and maintaining the above-styled cause and for obtaining an adjudication of the questions therein involved.

Wherefore, within six (6) months after the termination of the service in the office of Secretary of the Interior of the honorable Roy O. West, relator moves that this cause be permitted to continue and be maintained against his successor in office, the honorable Ray Lyman Wilbur.

EDGAR WATKINS,
Attorney for Relator.

Receipt of copy acknowledged this Mch. 11, 1929.

O. H. GRAVES,
Atty. for Defts.

In Supreme Court of District of Columbia

Order substituting party respondent

Notice of the foregoing motion having been given, and the honorable Ray Lyman Wilbur, Secretary of the Interior, consenting thereto, it is ordered that Ray Lyman Wilbur, as Secretary of the Interior, be, and he is hereby, substituted for the respondent Roy O. West, and this cause be permitted to be continued and maintained against Ray Lyman Wilbur as successor in office of respondent Roy O. West.

WENDELL P. STAFFORD,
Judge.

In Supreme Court of the District of Columbia

[Title omitted.]

Response to the rule to show cause.

Filed Mar. 15, 1929

Comes now Ray Lyman Wilbur, Secretary of the Interior, and responding to the rule to show cause issued herein, suggests to the court that the petition for review presents the sole and only question finally determined by the Secretary of the Interior in connection with petitioner's claim for losses sustained under section 5 of
7 the war minerals relief act of March 2, 1919 (40 Stat. 1272), as amended, to wit, whether or not one who was engaged in producing or preparing to produce chrome and sustained a net loss by reason of expenditures for the purchase of property, to wit, the property upon which the mine was located, is entitled to have such loss reimbursed under the provisions of said act.

This question the Secretary decided in the negative, as shown by copies of the various decisions of the Secretary of the Interior and recommendations of the War Minerals Relief Commissioners marked, respectively, Exhibits A, B, C, D, E, and F, attached hereto and made a part hereof.

Under the act of February 13, 1929, Public, No. 728, 70th Congress, this court is vested with jurisdiction to review such questions of law as may have been decided in the disposition of petitioner's said claim by the Secretary of the Interior, and respondent makes no objection to, but on the other hand invites, a review of such questions. The petition for review presents the sole question of the purchase of property as aforesaid, and it is assumed that the court will confine its review to the single question raised.

RAY LYMAN WILBUR,
Secretary of the Interior.

By E. C. FINNEY,
Solicitor, Interior Department.

O. B. GRAVES,
Assistant to the Solicitor.

Attorney General.

Ex. A to response to rule

UNITED STATES DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, February 12, 1921.

Claim No. 746

In the matter of the claim of the Vindicator Consolidated Gold Mining Company, Denver, Colorado. Chrome.

The honorable the SECRETARY OF THE INTERIOR.

DEAR SIR: This is a claim for alleged losses sustained in producing chrome from two properties, one of which, known as the Deer Creek mine, was located 23 miles southwesterly from Glen Rock, Wyoming, and the other, known as the Froom tract, located in San Luis Obispo County, California.

The Deer Creek mine was purchased by the claimants and the Froom tract was leased. The engineers who examined these properties have reported that in their opinion they were of commercial importance during the war period.

Section 5 of the act under which this claim is filed provides as follows:

"That the Secretary of the Interior be, and he hereby is, authorized to adjust, liquidate, and pay such net losses as have been suffered by any person, firm, or corporation by reason of producing or preparing to produce either manganese, chrome, pyrites, or tungsten in compliance with the request or demand of the Department of the Interior, the War Industries Board, the War Trade Board, the Shipping Board, or the Emergency Fleet Corporation to supply the urgent needs of the Nation in the prosecution of the war."

This claim was rejected on October 16, 1920, but the claimants have since shown that the California property was visited on June 21, 1918, by Mr. E. L. Young, of the Bureau of Mines, who requested them to produce as much chrome as possible. The superintendent of the California mine immediately transmitted this information to the claimant company at Denver. July 1 was therefore fixed as the date on which audits of the claim should be made.

The following statement, taken from the auditor's accounts, shows a loss on each property between July 1, 1918, and November 12, 1918.

Deer Creek property, July 1, 1918, to November 12, 1918

Labor	$8,607.59
Supplies	2,215.81
[illegible]	2,472.79
[illegible]	978.61
[illegible]	170.39
[illegible] equipment	704.28
[illegible]	3,253.35
[illegible] expense	166.75
[illegible]	2,650.50
Operating	[illegible]

Miscellaneous:		
Property	16,259.00	
Personal & traveling	616.16	
Engineers	609.25	
Legal	300.00	
Salaries	86.65	
Interest	74.48	
Total misc		$17,895.54
Total expenditures		38,254.80
Disallowed:		
Property	16,259.00	
Engineers	609.25	
Legal	300.00	
Interest	74.48	
		17,242.73
Allowable expense to Nov. 12, 1918		$21,012.07
Credits:		
261 tons ore—being 65% of 400 tons as estimated by Mr. Francklin	11,325.14	
Salvage as per engineer's report	2,033.79	
		$13,358.93
Loss		$7,653.14
Allowance for sorting and hoisting 261 tons ore @ $3 per ton		783.00
Total		$8,436.14
Allowance as royalty to cover depletion on property—10% of ore sales		1,132.51
		$9,568.65

California property, July 1, 1918, to November 12, 1918

Labor	3,125.96	
Supplies	492.28	
Lumber	147.77	
Explosives	62.55	
Assaying	27.00	
Tools	3.75	
Equipment	769.50	
General expense	22.53	
Ore purchased	102.50	
Hauling	196.14	
Total operation		4,959.99
Miscellaneous:		
Personal & traveling		106.22
		5,066.21
Credits:		
Sale of equipment	444.00	
Car ore sold	1,299.04	
		1,743.04
Allowance made for royalty on car ore sold		197.22
		$3,520.39
Summary:		
Loss Deer Creek property		$ [illegible]
" California		[illegible]
Total		13,089.04

Claimants purchased the Deer Creek property and paid thereon $16,259.00. This amount has been disallowed.

The war minerals relief act does not contemplate reimbursement for moneys paid for purchase of mining properties. Provision for

such losses was stricken from the measure when it was being considered by the Senate.

In the Senate on January 28, 1919, a distinguished Senator objected to the provision which was then carried in the legislation and said:

"I want to call the attention of the Senator from Nevada to the words 'or acquiring property for producing.' It seems to me that is going too far. I think that where a man has purchased a piece of property for producing these metals we should not authorize the Secretary of the Treasury to go into the question as to what he paid and whether he lost upon the property because of the fact that the war closed sooner than he anticipated. I believe that is going altogether too far. I will ask the Senator if it would not be very much better to strike out the words 'or acquiring property for producing'?"

The Senator in charge of the measure answered: "I will consent to that, Mr. Chairman."

The measure as it ultimately became a law did not contain the words "or acquiring property for producing."

It is accordingly recommended that an award of $13,089.04 be made.

(Signed) JOHN F. SHAFROTH,
" PHILIP N. MOORE,
" HORACE G. POMEROY,
Commissioners.

Ex. B to response to rule

UNITED STATES DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, February 19, 1921.

Claim No. 746

In the matter of the claim of the Vindicator Consolidated Gold Mining Company, 603 Symmes Bldg., Denver, Colorado. Property, Converse Co., Wyoming. Chrome

The honorable the SECRETARY OF THE INTERIOR.

DEAR SIR: On February 12, 1921, the commission recommended an award in this claim in the amount of $13,089.04.

Mr. Nelson Franklin, vice president of the claimant company, has since asked for additional allowance covering several items as set forth in his letter of February 16, 1921. After a personal interview with Mr. Franklin, and a reconsideration of the items, the commission desires to recommend an additional allowance in the items covering the charge for engineering work, and to reduce the amount taken for salvage of ore on hand from November 12, 1918, in the Wyoming operation.

In the California operation a deduction of $1,299.04 was made for a car of chrome ore which was sold. The commission finds that only four tons of this ore was mined after stimulation, therefore the deduction of the entire car was in error. With the corrections above noted, the statement of allowable losses will take the following form:

Deer Creek, Wyoming, property, July 1, 1918, to Nov. 12, 1918

Total expenditures (see original recommendation for details)		$38,264.80
Less hauling on 33 tons @ $9.00		297.00
		$37,967.80
Deductions:		
Property	$16,250.00	
Engineers (L. S. Noble)	121.75	
Legal	300.00	
Interest	74.48	
		16,746.23
Allowable expenditures to November 12, 1918		$21,221.57
Credits:		
Ore sales, 228 tons @ $43.40	$9,895.20	
Salvage eng.'s estimate	2,083.79	
		11,978.99
		$9,242.58
18 Allowance for sorting and hoisting 228 tons @ $3.00		684.00
		8,957.58
Allowance for royalty to cover depletion of property 10% of ore sales		989.52
		$10,947.10

California property, July 1, 1918, to Nov. 12, 1918

Total operation		$4,959.99
Less hauling of ore mined before stimulation		176.00
Total operating		4,783.99
Personal and traveling		106.22
		4,890.21
Credits:		
Sale of equipment	$444.00	
4 tons ore sold @ $40	160.00	
		604.00
		$4,286.21
Allowance for royalty, 4 tons @ $6		24.00
		$4,310.21
Less Deer Creek property		$10,947.10
California		4,310.21
		$6,636.89

The commission accordingly recommends an award of $6,636.89.

(Signed) Louis F. Seaborn,
Commissioner.
Royden B. Moore,
Commissioner.
Alexander G. Penrose,
Commissioner.

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Ex. C to response to rule

Copy

UNITED STATES DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, February 24, 1921.

Claim No. 746

In re The Vindicator Consolidated Gold Mining Co.

The above is a claim under the war minerals relief act, section 5, act of March 2, 1919 (40 Stat. 1274). The law authorizes compensation for losses incurred in the production of chrome during the war due to stimulation by the Government.

Here there was such stimulation. I have considered the record and an award of $15,257.31 is made as recommended by the War Minerals Relief Commission.

(Sgd.) PAYNE.

Ex. D to response to rule

UNITED STATES DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, April 14, 1922.

Claim No. 746

Vindicator Consolidated Gold Mining Company, Denver, Colorado

MEMORANDUM IN REVIEW OF

February 24, 1921, Secretary Payne, on the recommendation of the former commission, awarded and paid to this claimant $15,257.31. Claimant filed a motion for rehearing under the amended act and upon request was permitted to present orally his objections to the award.

At the oral hearing it was agreed that there was but one question to be decided in this review, namely, whether the deduction which the former commission made for the purchase of property was proper; whether the expenditure in question was, in fact, for the purchase of the mining land.

July 15, 1918, claimant took a lease and bond on the property, the terms of which were that claimant was to pay a royalty of 12½ cents a ton for all the ore extracted and sold, and at the end of one year was to pay a purchase price of $60,000.00. On October 30, 1918, claimant paid $6,750.00 as advance royalty and at the same time, by instrument, as is admitted, secured full title to the property which title is still in claimant. Claimant now contends that the $6,750.00

should be regarded as advanced royalty and not as a property purchase.

The matter is so clear to me that I shall make little comment upon it. If the money was paid as royalty and not as purchase money, how is it that by its payment claimant secured title to the property? The taking of title without reservation establishes the character of the transaction beyond question.

I have no doubt whatsoever that the former commission was right in holding this to be purchase of property and not an allowable item.

The claim should be denied.

(Signed) IRA E. ROBINSON,
Commissioner.

Ex. E to response to rule

UNITED STATES DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, May 16, 1922.

W. 45. Claim No. 746. War minerals relief act. Affirmed

The Vindicator Consolidated Gold Mining Company

Appeal from the War Minerals Relief Commissioner

This claim arising under section 5 of the act of March 2, 1919 (40 Stat. 1274), is for losses sustained in producing chrome from two properties, one known as the Deer Creek mine in Converse County, Wyoming, the other located on the Froom tract in San Luis Obispo County, California.

16 After full consideration of the case the original War Minerals Relief Commission, under date of February 19, 1921, recommended an award in the sum of $15,247.31. Included in the expenditures disallowed was the sum of $10,250, representing an outlay of $7,500 for a lease of the Deer Creek mine and $2,750 subsequently paid for the title to the mine and property.

Under date of February 19, 1921, the company agreed in writing "to accept the amount recommended as full and complete payment of all the claims of the Vindicator Consolidated Gold Mining Company against the United States under the provisions of section 5 of the [illegible] Congress of March 2, 1919, reserving the right of appeal in case of [illegible] allowing the above section." The award was thereafter approved by Secretary Payne, certified for payment, and [illegible] the reopening of the claim [illegible] November 23, 1921 (Public No. 30, [illegible] for the act of March 2, 1919, [illegible] the item of $10,250, [illegible] the purchase price of [illegible] was erroneously disallowed.

The War Minerals Relief Commission thereupon reviewed the record and held, under date of April 10, 1920, that the item was properly rejected; that it clearly represented a payment for property and was not reimbursable under the law.

Upon appeal it is contended that the aforesaid sum of $2,500 represents an expenditure made by the claimant July 15, 1918, for prior development upon the property whereby a body of ore was disclosed which by measurement and analysis showed a net value at the then price of ore far in excess of the amount paid. And that the sum of $8,759 represents a payment made by claimant to the owner of the property October 25, 1918, before any shipments could be made therefrom and was paid after long negotiations between the claimant and the owner as royalty in advance and was accepted by the owner as full settlement of all further royalties which claimant would have been obligated to pay under the terms of the lease.

17 The record has been examined, and the facts in this regard appear to be as follows: Mr. Wood, then president of the Vindicator Consolidated Gold Mining Company, personally undertook and financed the operation on the Deer Creek property in July, 1918, obtaining a lease on a royalty basis, with an option or agreement of purchase at the end of one year for the sum of $25,000. In September, 1918, the Vindicator Company took over the mine and property, reimbursing Mr. Wood's expenditures. The payments made upon the lease and purchase price of the mine by Mr. Wood and his successor in interest are shown to be as follows:

Payment by Wood July 15, 1918	$2,500
Payment by Wood September 11, 1918	2,500
Payment by V. C. G. M. Co. October 11, 1918	2,500
Payment by V. C. G. M. Co. October 23, 1918	8759
Total payment on purchase price of mine	16,259

The answered questionnaire in connection with this claim for the Deer Creek operations reports expenditures in the sum of $16,259 under the heading "Purchase of lease and title to property," and at the hearing before the War Minerals Relief Commission held in Denver, Colorado, in August, 1919, Mr. Nelson Franklin, general manager for the Vindicator Company testified with respect thereto as follows:

Mr. FRANKLIN. The purchase of the mine, we paid $7,500 for the lease on the property, and paid $8,760 for the mine, that has all been paid.

Chairman SHARROTH. That is in addition to the $7,500?

Mr. FRANKLIN. $8,760?

Chairman SHARROTH. Yes, sir.

Mr. FRANKLIN. Yes, sir; we own the property.

Commissioner FOSTER. Fee simple?

Mr. FRANKLIN. Fee simple, yes, sir; it is patented property; we first bought the lease and bond and afterwards bought the property, from the owners, a couple of months subsequent.

Chairman SHAFROTH. And the total of these two is what?

18 Mr. FRANKLIN. $16,250, with $19 recording expense, which made $16,269, which we have charged up to cost of property.

In the light of the foregoing it is abundantly clear that the expenditure in question was made to obtain a transfer of property and mining rights. Such expenditures are not reimbursable under the law, and no further award will be made.

(Signed) E. C. FINNEY,
Acting Secretary.

Ex. F to response to rule

UNITED STATES DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, September 22, 1922.

W 45. Claim No. 746. War minerals relief act

The Vindicator Consolidated Gold Mining Company

On reconsideration

The sole question involved in this case is whether an expenditure of $16,269 which was disallowed by the former War Minerals Relief Commission because for the purchase of property known as the Deer Creek mine, and upon rehearing disallowed by Commissioner Robinson for the same reason, should be treated and regarded in its entirety as purchase money, or in part as advanced royalties.

It is clear beyond question that the expenditure aforesaid represents the purchase price of the mine. It was so stated in claimant's accounts and it was freely admitted in the hearing that in consideration of this payment fee title to the property was transferred. In this connection the record shows that in July, 1918, Mr. G. S. Wood, then president of the Vindicator Consolidated Gold Mining Company, began this chrome operation on his own account, obtaining a lease and bond which called for a payment of 12½% of the value of all ore shipped from the mine until said royalty in the aggregate reached $25,000, presumably to be obtained in a year's time, when full title to the property was to be conveyed to the lessee.

19 Mr. Wood started work on the property in July, 1918, repairing and building roads, constructing a tramway, and making various camp improvements. The amount spent up to September 18, 1918, when the operation was taken over by the Vindicator Company, was $13,743.80, as shown by the engineer's and auditor's reports. Of this amount, $5,000 was actual "property account," representing payments on the lease. The balance was operating cost on the mine, development and some miscellaneous expenses, such as traveling and engineering and legal fees.

As above stated, the operation was taken over by the Vindicator Company September 18, said company reimbursing Mr. Wood's ex-

penditures and claiming, according to its own statement, all liabilities, including the balance due on the purchase price of the property. Payments made upon the purchase price of the mine by Mr. Wood and the Vindicator Company are shown to be as follows:

Payment by Wood July 15, 1918	$2,500
Payment by Wood September 11, 1918	2,500
Payment by the V. C. G. M. Co. October 11, 1918	2,500
Payment by the V. C. G. M. Co. October 28, 1918	3,750
Total	$11,250

In adjusting the claim the original commission fixed stimulation as of July 1, 1918, covering the period of Mr. Wood's operation, and gave the claimant company credit for expenditures incurred upon the mine by the former lessee on account of labor, supplies, equipment, etc., as follows:

Labor	$5,181.58
Supplies	624.20
Lumber	418.60
Explosives	137.
Tools	97.10
Camp equipment	474.15
Equipment	1,776.60
General expenses	24.22
Personal and travel	150.20
Total	$8,881.65

20 No ore had been shipped at the time of the armistice, but it is shown that a considerable quantity was on hand, and it appears that 228 tons were salvaged at $43.40 per ton. A royalty allowance of 10% was made to cover depletion of property.

The acquisition of title to the property establishes the character of the transaction beyond question and the contention that the amount in question was paid as advance royalties does not and can not in any degree alter the fact that it was paid to secure a transfer of property and mining rights.

Expenditures of this character are not reimbursable under the law.

(Signed) E. C. Finney,
First Assistant Secretary.

In Supreme Court of the District of Columbia.

[Title omitted.]

Demurrer.

Filed Mar. 15, 1929.

Comes now the relator by its attorney and says that the answer of respondent to the rule to show cause and to the petition herein is bad in substance.

Note—Points to be argued.

1. That as shown by the answer and response and the undisputed allegation of the verified petition herein, relator suffered net losses

from payments made for the purchase of property used in producing chrome; that relator in making such and other expenditures complied with all the conditions of the law authorizing it to receive payment of its net losses; that respondent's predecessors in office refused to consider such net losses in the final decision making relator an award of other parts of its net losses. That from such facts such net losses for which an award was denied and payment refused are in law proper items to be included under awards required to be made by the Secretary of the Interior by the provisions of section 5 of the act of March 2, 1919, and acts amendatory thereof, which statutes are referred to in the pleadings herein.

2. This court has jurisdiction and authority under the act of February 13, 1929, to determine the question of law here involved and to enter such orders herein as may be necessary to enforce its conclusion on such question of law.

EDGAR WATKINS,
Attorney for Relator.

Service accepted and receipt of copy acknowledged this 15th day of March, 1929.

O. H. GRAVES,
Attorney for Respondent.

In Supreme Court of the District of Columbia

[Title omitted.]

Stipulation

Filed Sep. 24, 1929.

It is hereby stipulated and agreed by and between counsel for the above named parties—

(1) That the submission of this cause heretofore made upon the petition and response be withdrawn.

(2) That the response be withdrawn and stricken from the record.

(3) That the uncertified copies of the findings of the Secretary of the Interior, the War Minerals Relief Commission, and the Commissioner of the War Minerals, attached to the response filed herewith, be considered by the court in connection with this case with the same effect as though they were the originals.

(4) That the respondent be permitted to file and serve answer in lieu of said response, and the demurrer to the response now on file be considered a demurrer to such answer.

(5) That petitioner rely upon the briefs heretofore filed in this cause and filed herewith a short statement to which respondent has the right to reply at any time within ten days.

(6) That thereupon this cause be and the same hereby is resubmitted to the court for final consideration upon the petition, answer, and demurrer.

Dated September 2, 1929.

EDGAR WARNER,
Attorney for Petitioner.
O. H. GRAVES,
Attorney for Respondent.

In Supreme Court of the District of Columbia

[Title omitted.]

Order on stipulation.

Filed Sep. 24, 1929

In accordance with the stipulation of counsel for the respective parties to this case, dated September 2, 1929, and duly filed herein, it is this 24th day of September, 1929, adjudged and ordered:

1. That the submission of this case to the court upon petition and response, heretofore made, be and the same hereby is withdrawn.

2. That the respondent's response to the relator's petition heretofore filed in this case be, and the same hereby is, deemed to have been withdrawn by the respondent, and the same hereby is stricken from the record.

3. That the respondent be, and he hereby is, permitted to file and serve an answer in lieu of said response, and that the relator's demurrer to said response, which is now on file, be permitted to stand and be considered as a demurrer to such answer.

4. That the uncertified copies of the findings of the Secretary of the Interior, of the War Minerals Relief Commission, and of the Commissioner of War Minerals, which are attached to the answer of the respondent which is to be filed as aforesaid, may be considered by the court in its consideration of this case with the same effect as though they were original papers.

5. That this case now be considered as having been resubmitted to the court for final consideration upon the petition, answer, and demurrer, and upon the briefs heretofore filed by the parties thereto, and upon the supplemental brief now filed by the relator.

WENDELL P. STAFFORD, *Justice.*

In Supreme Court of the District of Columbia

[Title omitted.]

Respondent's answer to the petition

Filed Sep. 24, 1929

The respondent, Ray Lyman Wilbur, for answer to the petition in this case, says:

1. The respondent admits that the allegations of the first paragraph of the petition were correct at the time the petition was filed, except that the question raised by the petition might have been decided by the Secretary of the Interior adversely to the petitioner's contention by the facts in the case.

2. The respondent admits that the allegations of the second paragraph of the petition were substantially correct at the time the petition was filed. The respondent says, however, that the correct title of the act approved February 15, 1929, is "An Act to amend an Act entitled 'An Act to provide relief in cases of contracts connected with the prosecution of the war, and for other purposes,' approved March 2, 1919, as amended."

The respondent says that since the filing of the petition in this case Edy O. Weir has ceased to be the Secretary of the Department of the Interior and that the respondent, Ray Lyman Wilbur, now is the Secretary of the Interior.

3–6. The respondent admits the allegations of the third, fourth, fifth, and sixth paragraphs of the petition.

7. The respondent admits the allegations of the seventh paragraph of the petition, except that he says that the language quoted therein had reference to a recommendation of the War Minerals Relief Commission, as appears from the following exact quotation from the decision of the Secretary: "The War Minerals Relief Commission reviewed the record and filed under date of April [illegible] that the [illegible] properly reported that it cannot be allowed [illegible] and was not recommendable under the law." Upon review and after full consideration of the claimed [illegible] in his opinion of May 16, 1928, held with [illegible] the War Minerals Relief Commission [illegible] and he rendered a decision similar to [illegible]

8. The respondent denies the allegations of the eighth paragraph of the petition. His denial in this respect is explained fully in the last paragraph of this answer.

9. The respondent denies the allegations of the ninth paragraph of the petition. He says that his denial in this respect is explained fully in the last paragraph of this answer.

The respondent says further that the act of March 2, 1919, did not contemplate reimbursement for amounts paid for the purchase of said property, even if the land contained the ores of the minerals specified in that act and that a loss sustained in that way was not within the purview of the act. It is claimed herein that money was paid for relation to the purchase of property, and if the court holds that losses were suffered thereby and are allowable in cases where claims are filed under the statute these will be subsequently determined by the Secretary of the Interior.

The respondent says that the provisions of the act of March 2, 1919, were intended for the guidance of the Secretary of the Interior, who was charged with the administration of its provisions, and that, therefore, it was necessary for the Secretary to construe the various provisions of the act in order that he might carry them into effect. The respondent says that the various Secretaries of the Interior in administering the act of March 2, 1919, including this respondent, have construed the provision of the act reading, "that the Secretary of the Interior be, and he hereby is, authorized to adjust, liquidate, and pay such net losses as have been suffered," as applying only to losses actually suffered at the date of the passage of [illegible] the act, whose amounts were or could be ascertained at that date and were capable of proof beyond any element of speculation.

The respondent says further that the said Secretaries of the Interior, including himself, have held that where title to real estate purchased by claimant was held by him at the date of the passage of the act of March 2, 1919, there was no loss existing at that date for which compensation could be made within the terms of the act.

The respondent says further that the said Secretaries of the Interior, including himself, have held that in any event losses sustained through investments in real estate, even if the land contained the ores of the minerals specified in the act of March 2, 1919, were not losses for which compensation could be made within the terms of that act.

The respondent says that the constructions placed upon the act, as aforesaid, were not unreasonable and that they were and are justified by the language of the act itself. The respondent says that in making said constructions upon the act of March 2, 1919, [illegible] Secretaries of the Interior, including himself, acted within the scope of their authority and in the exercise of their [illegible] and that the constructions [illegible] contrary, or opposed [illegible] by the courts as correct. [illegible] that any error of law [illegible] Interior in the adjudication [illegible] and that, therefore, [illegible] reimbursement [illegible] known as the Deer Creek [illegible] respondent being

based upon his finding that no such [illegible] was [illegible] matter of fact, is not subject to review under the [illegible] of February 13, 1929, pursuant to which the petition in the instant case was filed.

Having fully answered the petition, the respondent asks to be hence dismissed with costs.

RAY LYMAN WILBUR,
Secretary of the Interior,
By JOS. M. DIXON,
Acting Secretary of the Interior.

28 [*Duly sworn to by Jos. M. Dixon; jurat omitted in printing.*]

Memorandum re exhibits

Exhibits filed with answer same as those filed with response to the rule to show cause.

In Supreme Court of the District of Columbia

At law

No. 76362

THE VINDICATOR CONSOLIDATED GOLD MINING COMPANY
vs.
RAY LYMAN WILBUR, SECRETARY OF THE INTERIOR

Final judgment

Filed Mar. 7, 1930

This cause came on to be heard on the petition of The Vindicator Consolidated Gold Mining Company for review and mandamus, and upon the answer of the respondent and the demurrer of petitioner, and upon the stipulation of the parties and the order of this court approving such stipulation, entered on the 24th of September, 1929, which order and stipulation, submitted to the court for final consideration upon the petition, answer, and demurrer the issues made thereby.

Now, on this March 7, 1930, ordered, adjudged, and decreed that the petition of The Vindicator Consolidated Gold Mining Company for review and mandamus is denied, and it is

29 ordered and decreed that the questions of law raised by the petitioner were properly adjudicated by the Secretary of the Interior, and the petition for review and mandamus are dismissed.

By the court:

WENDELL P. STAFFORD,
Justice.

From the foregoing judgment The Vindicator Consolidated Gold Mining Company, petitioner, in open court, notes an appeal to the

Court of Appeals of the District of Columbia, which is allowed, and the undersigned, who will act upon said appeal, is fixed in the sum of [illegible] dollars, with leave to deposit the sum of fifty dollars with the clerk in lieu thereof.

By the court,

WENDELL P. STAFFORD,
Justice.

Consent as to form:

O. H. GRAVES,
Atty for Defts.

EDGAR WATKINS,
Attorney for The Vindicator Consolidated Gold Mining Company.

Memorandum re bond

March 7, 1930.—$50 deposited in lieu of bond on appeal

In Supreme Court of the District of Columbia

[Title omitted.]

Assignment of errors

Filed Mar. 7, 1930

The appellant, The Vindicator Consolidated Gold Mining Company, assigns the following errors in the ruling of the court.

The court erred:

1. In refusing to hold and to direct the respondent to hold that an investment in real estate for the purposes provided for under the act of March 2, 1919, and amendments thereto was a loss when such investment was lost, respondent having admitted that it was the holding of himself and predecessor Secretaries of the Interior that such a loss was not a loss for which compensation could be made within the terms of the act aforesaid.

2. In refusing on the admitted fact to adjudge and decree that appellant's loss from an investment in real estate was such a loss as constituted a net loss under section 5 of the act of March 2, 1919, and its amendments, that being the act relied upon by appellant in his petition herein.

3. In refusing to direct the respondent to make an award to appellant, respondent having admitted that appellant purchased property which was an expenditure of money, and the law requiring the repayment of the net loss from such purpose.

4. In refusing to direct the Secretary, regardless of whether or not [illegible] and their value lost had been sold, to enter an award for net losses suffered and admittedly suffered by respondent.

5. In refusing to enter a final decree directing respondent-appellee to take jurisdiction of the claim of appellant and determine the amount of

not lessen the penalties of said [illegible] the purposes stated in the act when the record also shows [illegible] been suffered by reason of such purpose.

6. In denying appellant relief on its petition herein [illegible]

[illegible]

Counsel for Appellant.

In Supreme Court of the District of Columbia.

[Title omitted.]

Designation of the record.

Filed Mar. 7, 1930

The clerk will please prepare the transcript of record on the appeal of The Vindicator Consolidated Gold Mining Company, including therein the following parts of the record:

1. Petition for review and mandamus.
2. The petition for an order substituting Ray Lyman Wilbur as respondent.
3. The original response to the rule to show cause, with the exhibits thereto attached.
4. The demurrer filed by The Vindicator Consolidated Gold Mining Company.
5. Stipulation of the parties hereto, dated September 2, 1929.
6. Order of the court on said stipulation, dated September 24, 1929.
7. Respondent's answer to the petition for mandamus, omitting exhibits copied with paragraph 3 above.
8. Final decree denying relief and dismissing the petition for review and mandamus.
9. Memorandum as to approval and filing of bond on appeal of The Vindicator Consolidated Gold Mining Company.
10. Assignment of errors on appeal of The Vindicator Consolidated Gold Mining Company.
11. This designation of transcript of record and the acceptance of service thereon.

Edgar Wat[illegible]

Counsel for Appellant,

The Vindicator Consolidated Gold Mining Company.

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Acknowledgment of service.

Notice is hereby accepted of the application for an allowance of the appeal in this cause; receipt is hereby acknowledged of a copy of appellant's assignment of errors and of the designation of record on appeal. All other and further notice and service is acknowledged.

[illegible]

Solicitor for Ray Lyman Wilbur,

Secretary of the Interior.

[Clerk's certificate to foregoing transcript omitted in printing.]

32 In Court of Appeals of the District of Columbia

[Title omitted.]

Minute entry of submission—Oct. 9, 1930

The above-entitled cause was submitted to the consideration of the court on the printed record and briefs filed herein by Messrs. Edgar Watkins and J. C. Trimble, attorneys for the appellant, and by Messrs. O. H. Graves and Victor H. Wallace, attorneys for the appellee. The appellant is allowed to file a supplemental brief, with leave to appellee to reply.

34 In Court of Appeals of the District of Columbia

THE UNITED STATES OF AMERICA, *ex rel.* THE VINDICATOR Consolidated Gold Mining Company, a Corporation, appellant

v.

RAY LYMAN WILBUR, AS SECRETARY OF THE INTERIOR

No. 5195.

Before MARTIN, Chief Justice; ROBB, Associate Justice; and WHEAT, Chief Justice of the Supreme Court of the District of Columbia

Opinion

Filed Feb. 2, 1931

Mr. Justice WHEAT delivered the opinion of the court:

This is an appeal from a judgment of the Supreme Court of the District, dismissing a petition of the appellant which sought a review, pursuant to the act of February 18, 1929 (c. 182, 45 Stat. 1166), of the decision of the Secretary of the Interior in rejecting in part a claim filed under section 5 of the act of March 2, 1919 (c. 94, 40 Stat. 1272, 1274), commonly called the war minerals relief act.

The statutory provisions are the same as those involved in the case of Crimora Manganese Corporation v. Wilbur, Secretary, decided this day.

The case was submitted to the court below upon petition and answer, from which the following facts appear:

Between the 6th of April, 1917, and the 11th of November, 1918, in preparing to produce and in producing chrome, in compliance with the requests of the Department of the Interior, The Vindicator Consolidated Gold Mining Company, hereinafter referred to as The Vindicator Company, expended and incurred obligations

35 for and upon property containing chrome in sufficient quantities to be of commercial importance. It filed its claim with the Secretary of the Interior, seeking an award for its net losses,

and allowed as part thereof the cost of the ore as an expenditure for the purchase of the property. The Secretary made an award but specifically denied anything for that item of loss. The petition alleges that the moneys expended for the purchase of the property constituted a net loss. After categorically denying that allegation, the Secretary in his answer says: "That the denial of this respect is explained fully in the last paragraph of this answer." [illegible]

In the last paragraph of the answer the explanation made of the denial is in substance that it appeared that the petitioner still retains the fee simple title to the real property which it previously had purchased, known as the Deer Creek mine; that where real property was purchased in fee simple, no loss was suffered by the purchaser because of payment of the purchase price so long as he retained the title for which he had paid; that under such circumstances it necessarily appeared as a matter of fact that petitioner had suffered no loss by reason of the money expended for the title; that the act of March 2, 1919, did not contemplate reimbursement for amounts paid for the purchase of real property and that a loss sustained in that way was not within the purview of the act. The answer also states:

"It is admitted herein that money was paid by relator in the purchase of property, and if the court holds that losses were sustained thereby and are allowable in cases where claimant retains title, the amount thereof will be subsequently determined by the Secretary of the Interior."

36 It is apparent, therefore, that the denial of the allegation that the amount paid by the petitioner for the property constituted a net loss, coupled with the explanation, raises an issue of law, not of fact. That is, the Secretary, without examining the facts, held as a matter of law that no loss could be suffered, within the meaning of the act, by one who had bought property and still retained title thereto. That is the sole question presented for our consideration, and the pleadings were obviously drawn for the purpose of raising it squarely and obtaining a decision thereon.

This question was considered by this court in the case of Work v. United States ex rel. Rives (54 App. D. C. 84). In that case it appeared that Rives, a claimant under the act, had agreed to buy two tracts of manganese land and had made an initial payment of $2,600 on the purchase price. On Armistice Day there was due on the purchase price the further sum of $11,000, but since the demand for manganese had ceased the land was not worth more than $1,000. To save himself further loss, Rives elected under his contract to [illegible] as liquidated damages the sum he had paid [illegible] which would become a net loss to him. The Secretary denied this [illegible] on the ground that money spent in the purchase of real estate [illegible] not recoverable under the statutory provision. [illegible] to be erroneous and, after considering the question [illegible] said, at p. 88:

Court in this cause be, and the same is hereby, [illegible] this cause be, and the same is hereby, remanded to the said Supreme